IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

CHARLES LIPSCOMB II,

Plaintiff,

v. CIVIL ACTION NO. 2:10-cv-00326

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiff Charles Lipscomb II's Complaint seeking review of the decision of the Commissioner of Social Security [Docket 2]. By Standing Order entered August 1, 2006, and filed in this case on March 15, 2010, this action was referred to United States Magistrate Mary E. Stanley for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Stanley filed a PF&R [Docket 16] on May 5, 2011, recommending that this Court affirm the final decision of the Commissioner and dismiss this matter from the Court's docket. Objections to the PF&R in this case were due on May 23, 2011; Plaintiff filed objections on May 23, 2011.

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, this Court need not conduct a de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

I. ANALYSIS

Plaintiff filed an application for Disability Insurance Benefits ("DIB") on August 8, 2006, alleging disability as of September 1, 2001, due to a back injury, high blood pressure, and chest pain. The full factual and procedural history of this case is set forth in the PF&R. Plaintiff summarized his objections as follows: "(1) The Commissioner erred in finding that the Plaintiff cites medical evidence outside the DIB period as proof of disability. (2) The Commissioner erred in determining that the ALJ reasonably gave no weight to the opinion of the claimant's treating physician, Dr. Hively." (Docket 17 at 1.) The magistrate judge found that: (1) "the ALJ did not err in finding that Claimant failed to establish a medically determinable impairment between September 1, 2001 and September 30, 2003," and (2) "the ALJ properly evaluated the claim and weighed the evidence of treating physician Dr. Hively under 20 C.F.R. § 404.1527(d)(2) and the applicable regulations." (Docket 16 at 38 & 47-48.)

Plaintiff objects that "the Commissioner erred in stating that the Plaintiff's citation to medical evidence outside the relevant period in support of disability was improper." (Docket 17 at 1-2.) In reviewing the ALJ's decision, the Court agrees with the magistrate judge that "the Commissioner is correct in stating that Claimant improperly cited medical evidence generated outside of the September 30, 2003 period." (Docket 16 at 38-39.) Further, even when the evidence outside that period is considered, "Claimant has failed to establish disability as defined in the Social Security Act. (*Id.* at 39.) Thus, Plaintiff's first objection is **OVERRULED**.

Plaintiff's second objection is the same argument made to the magistrate judge, that the ALJ did not properly weigh the opinion of Dr. Hively. Again, the Court agrees with the magistrate judge

that the Commissioner's findings were supported by substantial evidence and were reached through application of the correct legal standards. This objection is also **OVERRULED**.

II. CONCLUSION

For the reasons set forth above, the Court **ADOPTS** the PF&R [Docket 16], **OVERRULES** Plaintiff's Objections to the PF&R [Docket 7], **DISMISSES** Plaintiff's Complaint [Docket 2], and **REMOVES** this matter from the Court's docket. A separate Judgment Order will enter this day.

IT IS SO ORDERED.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: August 8, 2011

THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE